CLERK'S COPY 3371

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED DECEMBER 26, 1902.

(18,762.)

(18,762.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 534.

W. C. O'NEAL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

INDEX.

	Original.	Print.
Caption	1	1
Affidavit of A. Greenhut	1	1
Order to show cause	5	4
Respondent's demurrer to rule	5	4
Order overruling demurrer	6	4
Respondent's answer to rule	7	5
Trial, findings, and sentence	11	8
Order of supersedeas	11	9
Petition for writ of error	12	9
Order allowing writ of error	13	10
Assignment of errors	13	10
Supersedeas bond	14	11
Citation to defendant in error and service	16	12
Writ of error	17	13
Clerk's certificate	18	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 27, 1902.

1 In the District Court of the United States for the Northern District of Florida.

In the Matter of the Rule upon W. C. O'NEAL to Show Cause Why He Should Not be Punished for Contempt upon the Statements Set Forth in the Rule and the Affidavit of A. Greenhut Thereto Attached.

Be it remembered that on the tenth day of November, in the year of our Lord one thousand nine hundred and two, the following affidavit was duly presented in open court to the judge of said court, and thereupon filed by the clerk, and is in the words and figures following, to wit:

In the United States District Court, Northern District of Florida, at Pensacola.

In the Matter of SCARRITT MORENO, Bankrupt.

UNITED STATES OF AMERICA, }
Northern District of Florida, City of Pensacola, } ss:

Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath doth depose and say:

That heretofore, to wit: on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable, the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to be adjudged a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court that, on September 15th, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court. That thereafter, to wit: on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, Esq., referee in bankruptcy, and at the same time deponent took the oath of office as required

2 by law, and thereupon he became charged with the duties and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto has occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said court, the honorable district court of the United States in and for the northern district of Florida.

That affiant was by his counsel, advised that it was his duty as trustee of the estate of said Scarritt Moreno as aforesaid to institute a certain suit or action in equity for the purpose of having certain

property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void and of no effect. That thereupon in the afternoon of Saturday, the 18th day of October, 1902 through his counsel, he, as trustee as aforesaid, and in the performance of his duties as aforesaid as an officer of the United States district court, caused to be filed in the circuit court of Escambia county, State of Florida, his certain bill of complaint therein and thereby, among other things, seeking the relief above referred to. That by the advice of his counsel, Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizens' National Bank of Pensacola, and others, were made parties defendant in and to said bill of complaint, and that upon the filing of the said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States, in and for the northern district of Florida, and in the due, proper and faithful performance of his duties as such officer, and were necessarily had and taken under the law and his oath of office.

That on Monday, the 20th day of October, A. D. 1902, between the hours of nine and ten o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him,
3 situated at No. — East Government street, in the city of Pensacola, aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books, etc., relating to and connected with the estate of the said Scarritt Moreno, bankrupt, in deponent's hands as trustee as aforesaid. That at the said time deponent was engaged in conversation with one Alex. Liscklioff when one W. C. O'Neal, who was at the said time president of The American National Bank of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing as aforesaid and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him; thereupon affiant stated in effect that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about five feet from the door of said office. Said O'Neal followed affiant into said office and stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal in effect asked this affiant why he, affiant, had brought the name of his, the American national bank, into the Moreno suit (meaning thereby the suit above referred to brought by affiant as trustee against Scarritt Moreno and others); that affiant replied that he, O'Neal could see his, affiant's, attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so and stated to affiant that he, affiant, was no gentleman; that affiant

thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal, was; that thereupon said O'Neal said we'll settle the matter, and turned about as if he intended to leave the premises of deponent, walking towards the door of said office and out upon the sidewalk. That affiant had no thought, idea or suspicion that the said O'Neal intended any personal violence toward him and quietly started forward from where he was so standing as aforesaid towards the door of said office leading into the street. That affiant barely reached the doorway of said office when said O'Neal,

4 without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and with intent to kill and murder deponent, struck at his, deponent's, throat with said knife, and cut deponent at a point behind the left ear, cutting through lower portions of said ear, then across the left cheek, ending at left corner of mouth, and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) on left side over lower ribs; (2) upon left hip; (3) on left elbow, and (4) on right hand. That the cuts, wounds and stabs so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present, deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three occasions on two or three different days, and has ever since been and is now under the care and treatment of a physician, who is attending to his wounds.

That said assault and attempt to murder was committed by said O'Neal as aforesaid solely because and for the reason that affiant, as an officer of the United States district court, in and for the northern district of Florida, had instituted the suit above set forth against the said American national bank and others, and to interfere with and prevent deponent from executing and performing his duties as such officer of said court, and that the said O'Neal did, by the said murderous assault, interfere with the management of the said trust by deponent as an officer of the said court, and did for a long period of time, to wit: from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent as such officer of the estate of said Scarritt Moreno, bankrupt.

A. GREENHUT.

Sworn to and subscribed before me this 7th day of November, A. D. 1902.

E. K. NICHOLS,
Referee in Bankruptcy.

5 Indorsed: U. S. dist. court, nor. dist. Fla. *In re* Scarritt Moreno, bankrupt. Affidavit and order on W. C. O'Neal. Filed November 10th, 1902. F. W. Marsh, clerk, by H. P. Holmes, D. C.

And thereupon and at the same time, the court aforesaid made and caused to be entered of record an order on the said W. C. O'Neal, which is in the words and figures following, to wit:

United States District Court, Northern District of Florida, at Pensacola.

In the Matter of SCARRITT MORENO, Bankruptcy.

Upon reading and filing the affidavit of Adolph Greenhut, trustee—

It is ordered that W. C. O'Neal show cause before this court on the seventeenth day of November, A. D. 1902, at ten o'clock a. m. why he, the said W. C. O'Neal, should not be adjudged guilty of contempt of this court on account of the matters and things set forth and alleged in said affidavit, and—

It is further ordered, that a copy of this order, together with a copy of the said affidavit, be served upon the said W. C. O'Neal forty-eight hours (48) before the time at which this order is made returnable. And I hereby appoint B. C. Tunison Esq., special counsel to represent the court in the prosecution hereof.

Done and ordered this tenth day of November, A. D. 1902.

CHAS. SWAYNE, *Judge.*

Indorsed: Served November 10th, 1902. R. P. Wharton. Filed November 10th, 1902. F. W. Marsh, clerk, by H. P. Holmes, D. C.

And afterwards, to wit: on the seventeenth day of November, in the year of our Lord, one thousand, nine hundred and two, came the respondent aforesaid, W. C. O'Neal, by his attorneys, Messrs. Blount & Blount, and filed in the office of said clerk his demurrer to the rule aforesaid, which is in the words and figures following, to wit:

In the United States District Court, Northern District of Florida.

In the Matter of the Rule upon W. C. O'NEAL to Show Cause Why He Should Not be Punished for Contempt.

6 The said W. C. O'Neal, respondent to said rule, demurs to the said rule and the affidavit thereto attached upon the following grounds, to wit:

1. That the affidavit of A. Greenhut attached to the rule to show cause does not show that the respondent has committed any offence of which this court has jurisdiction in this proceeding.

2. That said affidavit does not show that the respondent has done any act punishable by this court as a contempt thereof.

3. That said affidavit does not show the commission by the respondent of any act of contempt against this court.

BLOUNT & BLOUNT,
Att'ys for Respondent.

I, Wm. A. Blount, of counsel for respondent, certify that in my opinion the foregoing demurrer is well founded in point of law and make oath that it is not interposed for delay.

W. A. BLOUNT.

Sworn to and subscribed before me this 15th day of November, 1902.

[SEAL.] A. C. BINKLEY,
Notary Public.

Indorsed: *In re* rule to W. C. O'Neal to show cause, etc. Demurrer to rule. Filed at 10 o'clock a. m. November 17th, 1902. F. W. Marsh, clerk. Blount & Blount, att'ys.

And afterwards, to wit, on the twenty-first day of November, in the year of our Lord one thousand nine hundred and two, the court aforesaid made and caused to be entered of record an order in the said cause, which is in the words and figures following, to wit:

U. S. District Court, Northern District of Florida.

In the Matter of SCARRITT MORENO, Bankrupt.

On rule, etc., on W. C. O'Neal.

This cause coming on to be heard on demurrer to rule filed by respondent, and the same having been argued by counsel, it is ordered that the said demurrer be, and the same is hereby overruled and said respondent is granted leave to file answer, which answer is to be filed on or before Nov. 22, 1902. To which ruling
7 respondent duly excepted.

Done and ordered this 21st day of November, 1902.

CHAS. SWAYNE, *Judge.*

Indorsed: *In re* W. C. O'Neal, contempt. Filed at 11 o'clock a. m., November 21st, 1902. F. W. Marsh, clerk.

And afterwards, to wit: on the twenty-second day of November, in the year of our Lord, one thousand, nine hundred and two, came the respondent herein by his attorneys aforesaid, and filed in the office of the clerk of said court his answer to the said rule, which is in the words and figures following, to wit:

In the United States District Court, Northern District of Florida, at Pensacola.

In re Rule upon W. C. O'NEAL to Show Cause Why He Should Not be Punished for Contempt upon the Statement Set Forth in the Rule and the Affidavit of A. Greenhut Thereto Attached.

Respondent for answer to the rule and to the said affidavit, says:

1. That he knows in part and presumes in part that the allegations of the first paragraph of said affidavit are true:

2. That he knows in part and presumes in part that the allegations of the second paragraph of said affidavit are true:

3. That the statements in the third paragraph of said affidavit are in part true and in part untrue, and that the following statement of the facts leading up to, accompanying and surrounding the affray between himself and the said Greenhut on October 20, 1902, are true:

That the said Greenhut had been from the organization of the American National Bank of Pensacola in October, 1900, a stockholder and director thereof; that while he was such stockholder and director, the said bank received from the said Scarritt Moreno a certain mortgage for the sum of $13,000, to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and *bona fide* transaction, and that
8 the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage: that the said Greenhut was cognizant of the whole of said transaction and knew of its *bona fides* and honesty, as he did of the subsequent *bona fide* transfer thereof to Alex. McGowan, S. J. Foshee and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid, was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight and valid transactions:

That prior to the said 20th of October, said Greenhut became endorser upon a certain negotiable paper of the said Scarritt Moreno to the said bank to an amount of about fifteen hundred dollars: that the said Greenhut refused to make good his said endorsement, or to pay to the said bank the money due upon said paper at its maturity or thereafter, and before the said 20th day of October the said bank had been compelled to sue him in the circuit court of Escambia county, Florida, upon said paper, and that in the said suit the said Greenhut interposed a defence which this respondent believed and believes to be untrue, and known to the said Greenhut to be untrue.

That on the morning of the 20th of October, 1902, respondent was proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhat with having brought the said suit mentioned in his affidavit against the said bank when he, the said Greenhut, knew as aforesaid, that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him as soon as he was at liberty, he then being engaged in conversation with one Alex. Lischkoff. The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude towards the bank of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned, and

in the bringing of an unfounded suit against it, the con-
9 versation however, concerning chiefly the bringing of the said suit against the said bank. Hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would "do respondent up," to which said respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, "Well, you know you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it, the said Greenhut (who was short, stout, heavily built and apparently much more muscular than respondent) struck the respondent (who is thin and feeble) and forced his against the railing in the said office. That respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocket knife, and opened it in order to protect himself, and upon said Greenhut rushing again upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated: That respondent does not know how many or where located were all the wounds inflicted with the said knife, and hence he is unable to admit or deny the allegations of the said affidavit relating thereto. That it is not true that the use of the said knife was with the intent to kill and murder the said Greenhut, or to do him any bodily harm, but respondent avers that it was entirely from the instinctive desire of respondent to defend himself from the attack of a larger and more powerful man.

4. That it is not true that the assault charged in the said affidavit was committed by respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said
American national bank, or to interfere with and prevent
10 him, the said Greenhut, from exercising and performing his duties as an officer of this court: That in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid, or contemplated any affray with the said Greenhut, or any personal conflict with him until he saw the threatening attitude of the said Greenhut towards him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

And respondent disclaims the existance on his part at any time of

any intent to interfere with, prevent, impede or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in anywise in the execution or performance of any of his duties as such trustee, and specially disclaims any intent to do any act which might savor in the slightest degree of contempt of this honorable court.

W. C. O'NEAL.

W. C. O'Neal being duly sworn says that he has read the foregoing answer and that the statements therein made are true.

W. C. O'NEAL.

Sworn to and subscribed before me this 18th day of November, A. D. 1902.

[SEAL.] JNO. PFEIFFER,
Notary Public.

BLOUNT & BLOUNT,
Attorneys for Respondent.

Indorsed: *In re* rule upon W. C. O'Neal. Answer of respondent. Filed November 22nd, 1902. F. W. Marsh, clerk. Blount & Blount, attorneys for respondent.

And thereafter, to wit, on the ninth day of December, in the year of our Lord, one thousand, nine hundred and two, at a stated term of the said district court, begun and held at the city of Pensacola in said district, on the said day, the said cause came on to be heard by the court on the said rule and answer, whereupon the
11 court, made and caused to be entered the following findings and order, to wit:—

In the Matter of the Rule upon W. C. O'NEAL to Show Cause Why He Should Not be Punished for Contempt of this Court as to the Matters and Things Set Forth in the Affidavit of Adolph Greenhut.

This cause coming on to be heard at this time on the affidavit of Adolph Greenhut, in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno, and upon the rule to show cause why he should not be punished for contempt of this court, issued thereon by this court against W. C. O'Neal, and upon the answer of the said respondent, W. C. O'Neal to the said rule and affidavit, and the court having heard the testimony and the witnesses for the prosecution and for the respondent and after argument of counsel, and consideration by the court, and the court being advised in the premises, the court doth find as follows:—

That the affidavit of Adolph Greenhut, upon which this rule was granted, is true, and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court, and it is therefore:

Ordered, adjudged and directed, that the said respondent, W. C. O'Neal, be taken hence to the county jail of Escambia county, at Pensacola in the State of Florida, and there confined for and during the period of sixty (60) days * * * , and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due process of law.

And the said respondent, W. C. O'Neal, at this time having sued out his writ of error to the Supreme Court of the United States and made and entered into a bond and undertaking, conditioned as required by law, and duly approved by this court, it is therefore ordered that the said writ of error be and operate as a supercedeas to the judgment heretofore rendered in this cause.

12 And on the same day, to wit: on the ninth day of December, in the year of our Lord, one thousand, nine hundred and two, came the said respondent, by his attorneys, and filed in the office of the clerk of said court his petition for an appeal, which, together with the order made thereon, is in the words and figures following, to wit:

In the United States District Court, Northern District of Florida, at Pensacola.

W. C. O'NEAL, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

Proceeding on the rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt in assaulting A. Greenhut, a trustee in bankruptcy in said court.

The said W. C. O'Neal, defendant, feeling aggrieved at the judgment and sentence of the said court, rendered in above cause on the 9th day of December, A. D. 1902, prays an allowance of a writ of error therefrom to the Supreme Court of the United States for the purpose of a review of the judgment heretofore rendered in said cause in favor of plaintiff, and against the defendant, overruling the demurrer of the defendant, (to the rule and affidavit thereto attached) asserting the want of jurisdiction of this court, to render any judgment of contempt against the defendant, upon the facts and other causes set forth in the said affidavit. This court holding and deciding that it had such jurisdiction, and that a transcript of the record and pleadings of the said cause, duly authenticated, sufficient to present to the said Supreme Court on said action of jurisdiction, shall be sent to the said court.

C. H. LANEY,
BLOUNT & BLOUNT,
Attorneys for W. C. O'Neal.

In the United States District Court, Northern District of Florida, — Pensacola.

W. C. O'NEAL, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

The defendant W. C. O'Neal, considering himself aggrieved by the rule of this court in said cause in which final judgment was rendered on the 9th day of December, A. D. 1902, holding upon demurrer to the rule and affidavit attached, that it had jurisdiction upon the facts stated in said affidavit, to try and sentence said defendant for contempt of this court, having on this day filed in this court his assignment of errors, and his petition praying for a writ of error to the judgment and proceedings in said cause, to the Supreme Court of the United States upon the said question of jurisdiction, and that a transcript of the proceedings as therein prayed may be made and sent to the Supreme Court. Now on this 9th day of December, A. D. 1902, it is ordered and considered by the court that the said writ of error is to be allowed and awarded upon the said question of jurisdiction alone, as prayed for. And this court thus certifies to the Supreme Court for its decision, the question of jurisdiction, alone, of this court over this cause, as follows:

Did this court have jurisdiction to try and punish the said defendant for contempt thereof, upon the facts and for the causes stated in the said rule and affidavit?

CHAS. SWAYNE,
Judge District Court of the United States,
Northern District of Florida.

Indorsed: W. C. O'Neal *vs.* The United States of America. Petition and order allowing writ of error. Filed December 9th, 1902. F. W. Marsh, clerk.

And at the same time, and on the same day, the said W. C. O'Neal, plaintiff in error, filed his assignments of error, which are in the words and figures following, to wit:

In the United States District Court, Northern District of Florida.

W. C. O'NEAL, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

14 Proceeding on the rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt in assaulting A. Greenhut, a trustee in bankruptcy of the said court.

The plaintiff in error assigns as error in the record and proceedings below in the foregoing cause:

1. The overruling by the said district court, of that portion of the demurrer of the defendant to the rule and affidavit asserting that the

court did not have jurisdiction; asserting that such rule and affidavit did not show that the respondent had committed any offence of which the said court had jurisdiction in the said proceedings; and the holding of the court in overruling such demurrer, that it did have such jurisdiction.

2. The further assertion, by the said district court, of jurisdiction in the cause by the rendition of judgment, adjudging the plaintiff in error guilty of contempt, as alleged in the rule and affidavit, and imposing punishment therefor.

C. H. LANEY,
BLOUNT & BLOUNT,
Attorneys for Plaintiff in Error.

Indorsed: W. C. O'Neal *vs.* The United States of America. Assignment of errors. Filed December 9th, 1902. F. W. Marsh, clerk.

And at the same time and on the same day, came the said plaintiff in error and filed and caused to be approved the following bond and undertaking, which is in the words and figures following, to wit:

Know all men by these presents, that we, W. C. O'Neal, as principal, and H. L. Covington and W. J. Hannah as sureties, are held and firmly bound unto the United States of America, in the full and just sum of one thousand dollars ($1,000.00) to be paid to the said United States of America — which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this 9th day of December, A. D. 1902.

Whereas, lately at the November term, A. D. 1902, of the
15 district court of the United States for the northern district of Florida, in a suit pending in the said court between The United States of America, plaintiff, and the said W. C. O'Neal, defendant, the same being a proceeding upon a rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt for an assault upon A. Greenhut, trustee, in Pensacola (of the said district court), and a judgment and sentence was rendered against the said W. C. O'Neal, and he has obtained a writ of error from the United States Supreme Court to reverse the judgment and sentence in the aforesaid suit, a citation directed to the United States of America citing and admonishing the United States of America to be and appear in the United States Supreme Court at the city of Washington, District of Columbia, thirty (30) days after the date of this citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said W. C. O'Neal shall appear in the United States Supreme Court at a term thereof to be held in the city of Washington, District of Columbia, on the sixth day of January, A. D. 1903, and from time to time thereafter during said term, and from term to term and from time to time until finally discharged therefrom, and shall abide and obey all orders made by the United States Supreme Court in said

cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence by the said district court made, shall be affirmed by the said United States Court, then the above obligation shall be void, else to remain in full force and virtue.

W. C. O'NEAL. [SEAL.]
H. L. COVINGTON. [SEAL.]
WM. J. HANNAH. [SEAL.]

Taken and approved this 9th day of December, 1902.

CHAS. SWAYNE, *Judge.*

Indorsed: W. C. O'Neal *vs.* The United States of America. Supersedeas bond. Filed December 9th 1902. F. W. Marsh, clerk.

And thereupon, and on the same day, to wit, on the 9th day of December, A. D. 1902, in pursuance of the said appeal, there issued out of said court a citation, which, together with the service made thereon, is in the words and figures following, to wit:—

16 To the United States of America:

You are hereby cited and admonished to be and appear at a term of the United States Supreme Court to be holden at the city of Washington, District of Columbia, on the 6th day of January, A. D. 1903, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Florida, at Pensacola, wherein W. C. O'Neal is plaintiff in error, and you are defendant in error, and show cause, if any there be, why the judgment and sentence mentioned in said writ of error should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 9th day of December in the year of our Lord one thousand nine hundred and two. Signed this 9th day of December, A. D. 1902.

[SEAL.] CHAS. SWAYNE, *Judge.*

Indorsed: Service of the foregoing citation acknowledged this 9th day of December, 1902. B. C. Tunison, specially appointed attorney for prosecution. John Eagan. United States attorney for northern district of Florida. W. C. O'Neal *vs.* The United States of America. Citation. Filed December 9th, 1902. F. W. Marsh, clerk.

And at the same time, and on the same day there issued out of the Supreme Court of the United States, bearing the signature and tested by the clerk of the district court of the United States for the northern district of Florida, the following writ of error, the original thereof, being hereto annexed and returned herewith, which, together with the return endorsed thereon is hereto attached, to wit:

17 THE UNITED STATES OF AMERICA:

The President of the United States to the honorable the judge of the district court of the United States for the northern district of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States of America and W. C. O'Neal, a manifest error hath happened to the great damage of the said defendant, W. C. O'Neal, as by his complaint appears. We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if the judgment therein be given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the 6th day of January, 1903, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the customs and laws of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this ninth day of December, in the year of our Lord one thousand nine hundred and two.

[Seal U. S. Circuit Court, Northern Dist. of Florida, Fifth Circuit.]

F. W. MARSH,
Clerk of the District Court of the United States for the Northern District of Florida.

The within writ of error served this December 9th, A. D. 1902 by lodging and filing a copy for the defendant in error in the clerk's office of the district court of the United States for the northern district of Florida at Pensacola. Witness my hand and seal of office this December 9th, A. D. 1902.

[Seal U. S. District Court, Northern Dist. of Florida, Fifth Circuit.]

F. W. MARSH,
Clerk U. S. District Court, Northern District of Florida.

18 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
Northern District of Florida. }

I, F. W. Marsh, clerk of the district court of the United States in and for the northern district of Florida in the fifth judicial circuit, by virtue of the attached and foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages numbered from

one to seventeen, inclusive, contain a true and complete transcript of the record and proceedings had in the district court of the United States aforesaid, in the matter of the rule upon W. C. O'Neal to show cause why he should not be committed or punished for contempt of said court, and wherein W. C. O'Neal is plaintiff in error and The United States is defendant in error, as the same remains of record and on file in said court.

Seal U. S. District Court, Northern Dist. of Florida, Fifth Circuit.

In testimony whereof, I have caused the seal of said court to be hereunto affixed, at the city of Pensacola, in the district aforesaid, this tenth day of December, in the year of our Lord, one thousand nine hundred and two.

F. W. MARSH, *Clerk.*

Endorsed on cover: File No. 18,762. N. Florida D. C. U. S. Term No. 534. W. C. O'Neal, plaintiff in error, *vs.* The United States. Filed December 26", 1902.

FILE COPY.

In the Supreme Court of the United States,

OCTOBER TERM.

No. 534.

Supreme Court U. S.
FILED
MAR 12 1903
JAMES H. McKENNEY,
Clerk.

W. C. O'NEAL, PLAINTIFF IN ERROR,

vs.

UNITED STATES, DEFENDANT IN ERROR.

On motion of Defendant in Error to advance this cause under the provisions of Supreme Court Rule Number Thirty-Two.

The plaintiff in error consents to the making of this order, but requests,

That an oral argument may be permitted, in addition to the filing of printed briefs; and

That such argument may not be set for a day earlier than April 15, 1903.

The request for the oral argument is because of the novelty and importance of the questions involved, to-wit:

Whether, despite the general rule that contempt proceedings in a lower court are not reviewable by appeal or writ of error in this court, a writ of error will lie under Paragraph Two, Section Five of the Act of March 3, 1891, (26 Statutes at Large, U. S. p. 826,) creating Circuit Court of Appeal, when the only matter sought to be determined is the jurisdiction of the court below;

Whether under the Act of March 2, 1831, (4 U. S. Statutes at Large, p. 487,) the limitation as to punishment of contempts in the presence of the court, "or so near thereto as to obstruct the administration of justice," refers to the locality of the offense, or the character thereof, and

Whether an assault upon an officer of the court not acting under specific order, process, mandate, etc. of the court, is a contempt of court.

I submit that these questions are, so far as I know, undecided in this court, and of sufficient importance to justify an oral argument.

The request that such argument, if granted, shall not take place until April 15, 1903, is made subject to the entire convenience of the court.

W. A. BLOUNT,
Attorney for Plaintiff in Error.